IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2016 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI T ROHIT

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 2016 of 2002
MR PH PATHAK for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR JS YADAV for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Rule. Mr. J.S.Yadav, learned Counsel waives service for the respondents.

With the consent of learned Counsel for the parties, this petition is heard and disposed of today.

1. The petitioner, in this petition, has challenged the order at annexure A dated 19.11.2001 passed by the respondent no.1 rejecting the request of the petitioner to refer the dispute for adjudication. The respondent no.1,while passing thesaid order, recorded the following reasons:

"It is reported that the workman has been paid compensation as per section 25F of the Industrial Disputes Act. No I.D.subsists."

2. It may be stated that the petitioner was in the employment of respondent no.2 during the period from 1984 to 1994. The services of the petitioner were terminated in the year 1994. He, therefore, approached Central Administrative Tribunal by way of an application being Original Application No. 211 of 1996. The Tribunal rejected the said application on the ground that it had no jurisdiction to entertain matters where the provisions of I.D.Act are invoked and, therefore, returned the papers to petitioner vide order dated 12.12.2000.

3. The petitioner raised demand for reinstatement with consequential benefits before the authorities under the I.D.Act. As per the say of the petitioner, the petitioner noted down the names of juniors in the demand. As stated above, the respondent no.1 rejected the reference vide his order dated 19.11.2001. Hence this petition.

4. Learned Counsel Mr. P.H.Pathak appearing for the petitioner submits that the 1st respondent has exceeded his jurisdiction by examining the merits of the case under the I.D.Act. According to the learned Counsel, the first respondent has simply to see as to whether it was an industrial dispute or not and in that circumstances, it was the duty of the respondent no.1 to refer the dispute to the appropriate Court.

5. Mr. J.S.Yadav, learned Addl. Central Govt. Standing Counsel, on the other hand, submits that the respondent no.1 has given reasons, namely that since the petitioner has been paid compensation as per section 25F

of the I.D.Act, industrial dispute does not subsist.

6. The law on this point is very clear. In the case of Telco Convoy Drivers Majdoor Sangh Vs. State of Gujarat, AIR 1989 SC 1565, the Apex Court laid down that while exercising powers under section 10(1), the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function and that in performing this administrative function, the Government cannot delve into the merits of the dispute and take upon itself the determination of lis, which would certainly be in excess of the power conferred on it by section 10.

7. The said principle is reiterated again in the case of Sharad Kumar Vs. Govt. of NCT of Delhi, (2000) 4 SCC 490. It was observed that the determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter, the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of section 2(s), thereby terminating the proceedings prematurely. such a matter should be decided by the Industrial Tribunal or Labour Court on the basis of the material to be placed before it by the parties.

8. In our opinion, in the instant case also, the first respondent could not have rejected the reference by observing that the workman has been paid compensation under section 25F of the I.D.Act and, therefore, the industrial dipuste does not subsist. In our opinion, it is nothing else but entering into the merits of the case which is not permissible in view of the law laid down by the Apex Court. We, therefore, hold that the order Annexure A rejecting the reference passed by the State Government is clearly erroneous and, therefore, quash and set aside the same and direct the first respondent to reconsider the case of the petitioner for referring the dispute to appropriate forum by passing appropriate orders. The said task be undertaken within two months from the date of receipt of the writ of this order.

Rule is accordingly made absolute with no order as to costs.

(Kshitij R.Vyas,J.)

(Sharad D.Dave,J.)

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